IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 3RD NOVEMBER 2006 / 12TH KARTHIKA 1928

WP(C).No. 35030 of 2005(T)

PETITIONER:

MATTUMMEL SHAMSUDEEN ZAKEER,
S/O.AHAMMED SHAMSUDEEN, MATTAMMEL HOUSE,
I.T.I.ROAD, KALAMASSERY.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, CO-OPERATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE JOINT REGISTRAR OF CO-OP.SOCIETIES
(G), ERNAKULAM, COCHIN 16.

3. THE ERNAKULAM URBAN CO-OP.BANK,
REPRESENTED BY ITS SECRETARY, ERNAKULAM
ERNAKULAM DISTRICT.

4. COCHIN CO-OP.HOSPITAL SOCIETY LTD.
E.288, REPRESENTED BY ITS SECRETARY,
ERNAKULAM, ERNAKULAM DISTRICT.

5. KALAMASSERY URBAN CO-OP.SOCIETY LTD,
E.1096, REPRESENTED BY ITS SECRETARY,
KALAMASSERY, ERNAKULAM DISTRICT.

6. T.F.GEORGE, THENMAPARAMBIL VEEDU,
THENAMPARAMBIL CHIKKACHAN ROAD,
KOCHI 16.

BY ADV. SRI.BABU KARUKAPADATH FOR R4 & R5
SRI.K.A.NOUSHAD
SRI.P.P.JACOB FOR R6

SRI.T.R.RAMACHANDRAN NAIR, SC,EKM URBAN FOR R3
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

P1: True copy of the notice No.CRB 2136/03 dated 20-8-2003, issued by the 2nd respondent along with enclosure.

P2: True copy of the show cause notice no.CRS 2136/03 dated 24-9-2003 of the 2nd respondent.

P3: True copy of the receipts issued by the Ernakulam Urban Co-operative Society on closing the account No.693 on 31-3-03

P4: True copy of the receipts issued by the Ernakulam Urban Co-operative Society on closing the account No.694 on 31-3-03

P5: True copy of the receipts issued by the Ernakulam Urban Co-operative Society on closing the account No.695 on 31-3-03

P6: A true copy of the separate receipt issued by the society receiving closing charge for closure of the account on 31-3-03

P7: A true copy of the explanation/objection submitted by the petitioner before the 2nd respondent on 1-10-2003

P8: A true copy of the order of the 2nd respondent dated 1-10-2003

P9: A true copy of the judgment of this Honourable Court in W.P.(C) No.32679/2003 dated 1-11-2004

P10: A true copy of the appeal filed before the 1st respondent.

P11: A true copy of the order dated 15-11-2005 passed by the 1st respodnent.

RESPONDENTS' EXHIBITS:-

R1(a): A true copy of the acknowledgment card in respect of loan No.693/98-99

R1(b): A true copy of the acknowledgment card in respect of loan No.694/98-99

R1(c): A true copy of the acknowledgment card in respect of loan No.695/98-99

R1(d): A true copy of the notice in respect of loan No.693/98-99 sent to the petitioner as evidenced by R1(a)

R1(e): A true copy of the notice in respect of loan No.694/98-99 issued to the petitioner as evidenced by Ext.R1(b)

R1(f): A true copy of the notice in respect of loan No.695/98-99 issued to the petitioner as evidenced by Ext.R1(c).

R3(a): Acknowledgment card signed by M.S.Zakkir dated 18-4-2002

R3(b) do. do.

R3(c): do. do.

K. Thankappan, J.

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W.P.(C). No. 35030 of 2005

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Dated this the 3rd day of November, 2006

JUDGMENT

Petitioner, who is the President of Kalamassery Urban Co-operative Society Ltd. and Director Board member of the Cochin Co-operative Hospital Ltd., challenges Exts.P8 and P11 orders passed by respondents 2 and 1 respectively. The 2nd respondent Joint Registrar by Ext.P8 order disqualified the petitioner to continue as member of the Director Bord of Cochin Co-operative Hospital Society Ltd. and the member of the managing committee of the Kalamassery Urban Co-operative Bank Ltd. The 1st respondent by Ext.P11 order dismissed the appeal filed by the petitioner upholding Ext. P8 order.

2. Learned counsel for the petitioner Sri.P.V.Surendranath submits that Ext.P8 order passed by the 1st respondent is absolutely against the principles of natural justice. The learned counsel also submits that the petitioner was not served notice from the society demanding him to clear off the defaulted amount and hence Ext.P8 order is totally against the mandatory provisions of Rule 44(2) of the Kerala Co-operative Societies

Rules, 1969. Learned Counsel for the petitioner further submits that Ext.P8 order is unsustainable, as it was issued without affording an opportunity to the petitioner to substantiate his case.

2. Heard

3. Learned counsel for the 6th respondent Sri P.P. Jacob submits that the 6th respondent had filed a complaint before the 2nd respondent alleging that the petitioner was a defaulter in the capacity of loanee and surety and he became disqualified to hold the positions. The Assistant Registrar submitted a report stating that the petitioner was a defaulter in the capacity of loanee and surety. On the basis of the report of the Assistant Registrar of Co-operative Societies, Ext.P2 notice was issued to the petitioner. It is also submitted that Ext.P8 order issued by the 2nd respondent was on the basis of the report received from the Assistant Registrar of Co-operative Societies. The learned counsel further submits that as per rule 44 of the Kerala Co-operative Societies Rules, 1969, no member of the society shall be eligible for being elected, or appointed as a member of the committee of the society, if he is a defaulter to a society. The learned counsel contends that in the appeal filed against the order passed by the Joint Registrar the 5th respondent has already produced photocopy copies of the acknowledgment showing that the required notice was served on the petitioner and the 1st

respondent being the appellate authority had concluded that the notice was served on the petitioner as per the provisions of the Act and the Rules and hence the prayers sought for in this petition may be rejected.

4. Learned Government Pleader submits that required notice was served on the petitioner demanding him to clear off the defaulted amount and as he failed to remit the amount within the stipulated time, he was disqualified from the position as a member of the 4th respondent and to continue as a member of the Board of Directors of the 5th respondent.

5. Question to be decided in this writ petition is whether Ext.P8 order is justifiable or not?

6. Rule 44 deals with disqualification of membership of committee, relevant portion of which reads as follows:-

1) No member of the society shall be eligible for being elected, or appointed as a member of the committee of the society under S.28 if he :-

(a) is disqualified under S.28; or

(b)is a near relative of a paid employee of the society; or

(c)(i) is in default to the society or to any other society in respect of any loan or loans taken by him or loan ini which he had stood surety, for such epriod, as is prescribed in the

> bye-laws of the society concerned or in any case for a period exceeding three months or is a defaulter to the society or to any other society.

Proviso to sub-rule (2) (a) (1) stipulates that the disqualification under sub-clause(1) of clause © of sub-rule (1) shall be deemed to be accrued only after expiry of a period of one month from the date of receipt by the member concerned of a notice from the society demanding him to clear off the defaulted amount specified therein and he fails to remit or cause to remit the amount within the said period. Proviso to sub-rule (3) also stipulated that if any person is or becomes disqualified to be a member of the committee, the Registrar may on his own motion or on a representation made to him by any member of the society or by its Financing Bank by an order in writing declare that he shall case to be a member of the committee of the society concerned from the date of such disqualification. Before passing an order, the Registrar shall give such person an opportunity to state his objections, if any against the proposed action and if the person wished to be heard he shall be given an opportunity to be heard. Proviso to sub-rule (2)(a) makes it clear that the disqualification under sub-clause(1) of clause © of sub-rule (1) shall be deemed to be accrued only after expiry of a period of one month from the date of receipt by the member concerned of a notice from the society demanding him to clear off the defaulted amount specified therein

and if he fails to remit or cause to remit the amount within the said period.

7. In the report filed by the the Assistant Registrar of Co-operative Societies it is stated that the petitioner was a defaulter in the capacity of loanee and surety in respect of loan No.693/98-99, 694/98-99 and 695/98-99. The contention of the petitioner is that he has not received any notice from the society demanding him to clear off the arrears of the aforesaid loan and the statement that the arrears have not been repaid by him even after one month of receipt of the notice is incorrect. In Ext.P7 the petitioner requested to adjourn the hearing of the matter and to give copies of the documents, which were relied on by the 2nd respondent while issuing Ext.P2 notice. No evidence is adduced to prove that the petitioner has received the notice from the society demanding to clear off the arrears with respect to the aforesaid loan amounts.

8. In the report of the Assistant Registrar it is stated that notices were issued by the 5th respondent to the petitioner and that notices were received by the petitioner. The report would not show that the notices issued from the 5th respondent were actually served on the petitioner. Hence, this Court is of the view that the mere production of photocopy of the

acknowledgment card is not sufficient to prove that the notice was served on the petitioner. Learned counsel for the 6th respondent relies on section 27 of the General Clauses Act to prove that notice was served on the petitioner. Section 27 of the General Clauses Act is for the general purposes of service of notice by post. The learned counsel also relies on a decision of the Supreme Court in K. Bhaskaran V. Sankaran Vaidhyan Balan and another ((1999)7 SCC 510) and a decision of this Court in Kunjan Panicker V. Christudas (1997(2) KLT 539). The above two decisions are relating to "giving" notice under section 138 of the Negotiable Instruments Act. Hence, the decisions are not applicable in the facts and circumstances of this case. Rule 44 stipulates that the disqualification shall be deemed to be accrued only after expiry of a period of one month from the date of receipt by the member concerned. The case of the petitioner is that he has not received the notice. There is no evidence to show that the required notice was really served on the petitioner. Hence, this Court is of the view that it is only proper for the 2nd respondent to re-consider the matter.

9. Therefore, Exts.P8 and P11 orders are hereby quashed and the 2nd respondent is directed to consider the matter afresh in the light of the findings entered in this judgment on affording proper opportunities to the parties. This shall be done as early as possible, at any rate within 60 days

from the date of receipt of copy of this judgment.

10. The registry is directed to return the original of the acknowledgment card to the 3rd respondent.

The writ petition is disposed of as above.

K.Thankappan,
Judge.

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K. Thankappan,J.

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W.P.(C) No. 35030/2005

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Judgment

3-11-2006